

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

**JOSE SANDOVAL**

**VS.**

**D.&J., ENTERPRISES, INC. AND  
ANTHONY BURDICK**

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**Civil Action No. 1:21-cv-194**

**COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff herein, **JOSE SANDOVAL**, and files his Original Complaint against **D.&J., ENTERPRISES, INC.** and **ANTHONY BURDICK** and for cause of action respectfully shows the following:

**PARTIES**

1. Plaintiff, Jose Sandoval is an individual and resident of the State of Florida.
2. Defendant, D. & J., ENTERPRISES, INC., is an Alabama corporation and duly licensed to do business in the State of Texas and doing business in the State of Texas for the purpose of accumulating monetary profit. D. & J. ENTERPRISES, INC. may be served with process through its registered agent, James Lewis Starr, 3495 Lee Road 10, Auburn, Alabama 36832.
3. Defendant, ANTHONY BURDICK, is a resident of Alabama and may be served with process at 19587 Goldville Road, Daviston, Alabama 36256.

**JURISDICTION**

4. This Court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(a)(1) because Plaintiff

and Defendants are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs. Therefore, this Court has subject matter jurisdiction to hear this civil action because of the amount in controversy and complete diversity of citizenship, as demonstrated above. Plaintiff specifically reserves his right to amend this pleading for a certain amount in the future.

### **FACTS**

5. On or about October 30, 2020, Jose Sandoval was in the course and scope of his employment working with B & C Enterprises of SC, Inc. hauling debris for D. & J. Enterprises, Inc. at a landfill in Orange, Texas. While performing his duties, Jose Sandoval suffered severe injuries when the operator of an excavator swung the machine into Sandoval, throwing him from the top of his truck to the ground. The operator of the excavator was Anthony Burdick, working in the course and scope of his employment for D&J Enterprises. Sandoval was taken via ambulance to Christus Southeast Texas — St. Elizabeth Hospital. Sandoval had a distal tibial fracture to his right leg and an undisplaced fibular fracture to his left side which necessitated surgery.

### **NEGLIGENCE**

6. Plaintiff received no warnings prior to the incident and was without fault when he was injured. The incident which caused Sandoval's injuries was proximately caused by the negligence of Defendants, their agents, servants, and employees, who were acting in the course and scope of their employment for Defendants at all times material to this action. The occurrence in question was a direct and proximate result of the carelessness and negligence of the Defendants.

7. Defendant, Anthony Burdick was working in the course and scope of his employment for Defendant D&J Enterprises at the time of Sandoval's injury.

8. At the time of the incident, Defendants failed to use ordinary care by various acts and omissions while operating heavy machinery owned/leased by Defendants. These acts or omissions, including but not limited to the ones listed below, were singularly or in combination, the proximate cause of Plaintiff's injuries and damages. Defendants were negligent in the following manner:

- a. D&J Enterprises employed the operator of the heavy machinery and are liable for his negligence pursuant to the doctrine of respondeat superior;
- b. D&J Enterprises entrusted the use of heavy machinery to an unqualified, incompetent and reckless operator;
- c. D&J Enterprises knew or should have known that its operator was unqualified, incompetent, and reckless;
- d. Failing to keep a proper lookout;
- e. Failing to train its operator how to use the equipment safely;
- f. Failing to take evasive action to avoid injuring others;
- g. Failing to operate the heavy machinery a safe distance from others;
- h. Failed to provide Plaintiff with appropriate warnings;
- i. Failing to provide a reasonably safe area for loading and unloading;
- j. Failing to perform hazard assessments of the area and work environment to evaluate any potential dangers;
- k. In some other manner yet unknown to be revealed during discovery in this action;

9. Defendants are jointly and severally liable for Plaintiff's injuries and damages alleged herein.

10. At all material times, Defendants owned, managed, directed and controlled operations and the equipment used in the operation, and are therefore liable for the negligence alleged. Each of the aforementioned negligent acts and/or omissions constitute either singularly, or taken in combination, proximately caused Plaintiff's losses and damages including but not limited to the following:

- (a) Past and future physical pain;
- (b) Past and future mental anguish;
- (c) Past and future physical impairment;
- (d) Past and future physical disfigurement;
- (e) Past loss of wages and household services;
- (f) Future loss of earning capacity and household services; and
- (g) Past and future medical expenses.

#### **RECOVERY OF INTEREST**

11. Plaintiff would additionally show that he is entitled to recovery of prejudgment interest in accordance with law and equity as part of his damages herein, and Plaintiff here and now sues for recovery of prejudgment interest as provided by law and equity, under the applicable provisions of the laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Jose Sandoval requests that Defendants, **D.&J., ENTERPRISES, INC.** and **ANTHONY BURDICK** be cited to appear and answer, that judgment be entered against Defendants, that Plaintiff recover his damages in accordance with the evidence, that Plaintiff recover his costs of court, that Plaintiff recover interest to which he is entitled under the law, and for all other just and equitable relief.

Respectfully submitted,

**STEVENSON & MURRAY**

/s/ William Robert Hand

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